



HUNGARIAN
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COMMITTEE

Curtailing the rights of teachers in Hungary

How the Government used legal tools to crack down on teachers asking for improvements in the public education system

23 March 2023

Executive summary

Dissatisfaction with and within the public education system has been mounting for years in Hungary. In early 2022, teachers' unions began organising a strike to protest, among others, heavy centralisation, shrinking autonomy, low wages and growing workload. Due to changes introduced in the early 2010s, in order to carry out lawful strikes, unions had to agree with the employer (the state in this case) on the "necessary minimum services" that must be provided even during a strike action. According to the relevant legal framework, in case no agreement is reached between unions and the employer(s), courts can determine the necessary minimum services. However, just when the unions were about to turn to court to establish these minimum services, the Government, abusing its excessive regulatory powers during a special legal order, issued a decree establishing the necessary minimum services. The decree's definition **emptied out the right to strike**.

The International Labour Organisation concluded in this respect that "the unilateral determination by one of the parties of a minimum service, in this case the Government, if negotiation has failed, is not in conformity with the principles of freedom of association. Any disagreement in this respect should be settled by an independent body having the confidence of the parties concerned [...]."¹ Furthermore, the ILO was of the view that the necessary minimum services as determined by the government "would appear to go beyond the notion of a minimum service limited to the operations which are strictly necessary to meet the basic needs of the population and may considerably restrict the right to strike of those in the public education sector".

As meaningful strike action was no longer possible, **teachers turned to civil disobedience, resulting in retaliatory dismissals** throughout the autumn of 2022.

Crackdown on dissent continues in 2023: in January, again abusing its power to rule-by-decree, the Government issued a **decree that put teachers voicing their dissatisfaction at an even more vulnerable situation**. The new rules create an environment where teachers cannot know the potential consequence of their civil disobedience actions until the end of the academic year, further increasing the likelihood of arbitrary, retaliatory dismissals.

It is in this context that **the Government put forth its latest proposal related to public education**. The draft law, among others, **would further weaken teachers' professional autonomy, increase employees' vulnerability vis-à-vis the school districts, and add additional obstacles to the already illusory possibility to strike**. If the Government submits its proposal to the Parliament in its current format, without duly considering the concerns raised by teachers' unions, it will **violate its commitments made to the EU**.

¹ Report No 401, March 2023, Case No 3426 (Hungary) - Complaint date: 23-MAR-22 – Active, see: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:4341064 .

Moreover, with these steps, the Government may jeopardise additional EU funds in the future, as the violations of teachers' rights protected also by the Charter of Fundamental Rights of the EU might amount to the non-compliance with the horizontal enabling conditions Hungary must fulfil in order to access funds. At the same time, Hungary is yet to address severe issues of non-compliance with horizontal and thematic enabling conditions as already established by the European Commission to access EU funds related to education.

This paper explains in detail the content of the above steps and formulates recommendations to bring the current legal framework in line with constitutional and EU law requirements also to ensure that no further EU funds are put at risk.

1. Introduction

Severely deteriorating conditions in the public education system in Hungary have led teachers, students and parents to ask for a change louder and louder in the past years. They have been demanding improvements in the public education system at demonstrations; teachers have been demanding better working conditions in the framework of strikes, and, finally, by exercising civil disobedience. However, instead of listening to the fact-based concerns and requests of the various professional, interest and civil society groups, the Hungarian government has chosen once again to crack down on dissent. Teachers' right to strike was curbed, several teachers exercising civil disobedience were dismissed, and the rules of dismissal have been changed in a way that considerably increases pressure on teachers engaging in civil disobedience.

The Government executed these retaliatory counter-measures against teachers by using its excessive regulatory powers based on the forever renewable special legal order. Abusing its mandate, it issued emergency decrees that violated the rights of teachers, circumventing the obligation of public consultation and changing rules overnight, with the next step being the cementing of the provisions into statutory law. The latest step in this process was the publishing of a draft law in March 2023 that would transform the employment status of teachers, would reduce their opportunities to assert their interests, and would severely restrict their professional autonomy.

In this paper, we present the content and context of the retaliatory legal steps taken by the Hungarian government as a response to its citizens exercising their rights and expressing their opinion in relation to an important public issue, the crisis of the Hungarian education system. Furthermore, we argue that the draft law published recently should not be submitted to the Parliament in its current format.

2. Context

2.1. The situation of public education and teachers in Hungary

Conditions in the public education system in Hungary have been deteriorating for years, which has had a negative effect on students and teachers alike. Hungarian students at the age of 15 scored lower than the OECD average in the 2018 PISA (Programme for International Student Assessment) survey in all three areas tested (reading, mathematics and science),² and the survey showed that their "mean levels of basic skills are significantly below the EU averages and have declined since 2009".³ As also

² Hungary – Country Note – PISA 2018 Results, https://www.oecd.org/pisa/publications/PISA2018_CN_HUN.pdf

³ European Commission, *Education and Training Monitor 2022 – Hungary*, November 2022, <https://op.europa.eu/en/publication-detail/-/publication/5512967d-66f7-11ed-b14f-01aa75ed71a1>, p. 6.

pointed out by the *Education and Training Monitor 2022 – Hungary*, a country analysis issued by the European Commission, “[e]arly school leaving has not improved over the past decade”, and “[p]erformance gaps appear early and are exacerbated by the selective school system”.⁴ The **shortage of teachers** in the country is “increasingly challenging”, and the “teaching workforce is ageing: in 2020, 46% of teachers were aged 50 or older”.⁵ The key factors in teacher shortages are **low salaries and high workload**: “Teacher salaries in Hungary are the lowest among the EU countries that are OECD members. They are equivalent to only 58-66% of the salaries of other tertiary graduates, depending on educational level.”⁶ Most probably as a result of that, the number of applicants for initial teacher education has decreased strongly in the past three years.⁷

Domestic professional, interest and civil society groups, such as the ‘I Would Like to Teach Movement’ (*Tanítanék Mozgalom*), have been striving to raise attention to these problems for years, looking for a substantive discussion with the Government, but to no avail. Activities included open letters, petitions, publishing articles and academic papers, and organising various public events, performances and protests. Finally, in the autumn of 2021, the two teachers’ unions, the Democratic Union of Educators (*Pedagógusok Demokratikus Szakszervezete, PDSZ*) and the Union of Educators (*Pedagógusok Szakszervezete, PSZ*) decided to go on strike in order to achieve an improvement in the working conditions of teachers, including a pay rise. The respective Ministry and the unions negotiated unsuccessfully, and so the unions announced a two-hour “warning” strike for 31 January 2022, and declared that in case the Government would not meet their demands, they would hold a full-fledged strike from 16 March 2022, for an indefinite period of time.

2.2. The Government gains excessive regulatory powers due to the state of danger

Throughout the events described in the present paper, **the Hungarian government has been enjoying excessive regulatory powers**. The Government first acquired these excessive powers with a view to the pandemic in the spring of 2020: it declared a “state of danger”, a special legal order regime, while the governing majority transformed the legislative framework in a way that the Government had a **carte blanche mandate to override any Act of Parliament via emergency government decrees** once a state of danger was declared. The Government has been maintaining a “rule by decree” system ever since, with only a few months of intermission, lately using the war in Ukraine as a pretext for keeping its excessive emergency powers.⁸ The constitutional and statutory framework governing the various special legal order regimes was amended as of 1 November 2022, but these amendments only cemented the very problematic practices developed during the pandemic in relation to the state of danger. As also criticized by the European Commission, **the Government has been using its emergency powers “extensively”**,⁹ and in an abusive manner, **for purposes not related to the ground for the state of danger (previously the pandemic, presently the war)**.¹⁰

⁴ Ibid., p. 6.

⁵ Ibid., p. 4.

⁶ Ibid., p. 4.

⁷ Ibid., pp. 4-5.

⁸ For a full overview, see: Hungarian Helsinki Committee, *Overview of Hungary’s Emergency Regimes Introduced due to the COVID-19 Pandemic. Update of 1 June 2022*, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/06/HHC_Hungary_emergency_measures_overview_01062022.pdf.

⁹ European Commission, *2022 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2022-07/40_1_193993_coun_chap_hungary_en.pdf, p. 25.

¹⁰ For details about the main concerns regarding the state of danger, the current legal framework and its evolution, further examples of the inappropriate use of emergency government decrees, and recommendations to remedy shortcomings, see: Hungarian Helsinki Committee, *Government gains excessive powers from forever renewable state of danger*, 24 February 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/HHC_Hungary_state_of_danger_24022023.pdf.

3. Curtailing the right to strike

3.1. The Government uses its emergency powers abusively

After announcing the two-hour strike for 31 January 2022, the teachers' unions attempted to agree with the respective Ministry about the exact "necessary minimum services" that must be provided during a strike under Act VII of 1989 on Strikes (in the case of certain professions providing indispensable services to society – doctors, teachers, public utility companies – employees can only go on a strike if they provide the necessary minimum services). The law prescribes that if the parties cannot agree on the level and conditions of such minimum services, they can request the court to establish what services must be provided during a strike.¹¹ Accordingly, since the negotiations were unsuccessful between the teachers and the government, the unions asked the court to establish the necessary minimum services, which the first instance court determined in line with the unions' proposal. This first instance decision was finally affirmed by the Kúria, Hungary's apex court as well.

Since the two-hour strike on 31 January did not lead to any positive steps by the Government, the unions proceeded to prepare for the strike beginning on 16 March 2022 as previously announced, and initiated negotiations with the respective Ministry again about the exact level of necessary minimum services that must be provided during the strike. Since, once again, the negotiations did not seem to lead to any tangible result, the unions were about to turn to the court to have the dispute with the Ministry settled, when the Government issued, as an emergency decree, **Government Decree 36/2022. (II. 11.)** on Certain State of Danger Rules Affecting Public Education Institutions on 11 February 2022. The decree entered into force the next day.

This government decree was the first step of cracking down on teachers raising their voice for better working conditions and better pay: it **determined the necessary minimum services that must be provided during a strike in such a broad manner that made a meaningful and at the same time lawful strike impossible, because it prescribed such a high level of services to be provided that made the strike practically invisible for society and thus deprived the strike of its true function.** Hence, **the Government used its emergency powers in an abusive manner, for purposes not related to the formal ground of the state of danger** (at that time, the pandemic), **rendered the right to strike in public education practically meaningless**, and so violated the rights of teachers as follows:

- The decree **violated teachers' right to strike** as enshrined in the Fundamental Law of Hungary¹² and protected by Article 11 of the European Convention on Human Rights¹³ when it restricted their right to strike without a legitimate aim, in an arbitrary and disproportionate manner.
- The decree **prevented teachers (the unions) from seeking meaningful judicial remedy**, as the court they finally turned to could only conclude that since the level of necessary minimum services had been determined in a government decree, it was not any more in the position to decide on the issue otherwise.¹⁴ This amounted to the **violation of the right to fair trial** as enshrined in the Fundamental Law¹⁵ and in Article 6 of the European Convention on Human

¹¹ Act VII of 1989 on Strikes, Article 4(3)

¹² Article XII(2)

¹³ See e.g.: *The National Union of Rail, Maritime and Transport Workers v. the United Kingdom* (Application no. 31045/10, Judgment of 8 April 2014), § 84; *Hrvatski Liječnički Sindikat v. Croatia* (Application no. 36701/09, Judgment of 27 November 2014), § 49; *Veniamin Tymoshenko and Others v. Ukraine* (Application no. 48408/12, Judgment of 2 October 2014), § 77.

¹⁴ Metropolitan Tribunal, 22.Mpk.705.042/2022.

¹⁵ Article XXVIII

Rights.¹⁶ In addition, this legislative step also went against the UN Basic Principles on the Independence of the Judiciary, which sets out that there “shall not be any inappropriate or unwarranted interference with the judicial process”.¹⁷

The two teachers’ unions submitted a constitutional complaint against Government Decree 36/2022. (II. 11.) in February 2022, claiming that it violated the right to strike, and that since no link could be established between most of its provisions and the enforcement of epidemiological rules, the Government exceeded its mandate under the state of danger. However, in June 2022, **the Constitutional Court declared the constitutional complaint of the teachers’ unions inadmissible**.¹⁸ Subsequently, both unions submitted an application to the European Court of Human Rights, claiming the violation of Articles 6 and 11 of the European Convention on Human Rights; the procedure is pending.

3.2. Cementing the violation on a statutory level

As of 1 June 2022, parallel to declaring a state of danger with a reference to the war in Ukraine, the Government terminated the state of danger declared due to the pandemic.¹⁹ As a result, all emergency decrees issued under the state of danger declared due to the pandemic lost their force (unless they were specifically kept in force), including Government Decree 36/2022. (II. 11.). However, at this point, **the governing majority chose to cement the violation of teachers’ right to strike on a statutory level**: it reintroduced the restrictions originally included in the government decree in Articles 14-15 of Act V of 2022 on the Regulatory Issues related to the Termination of the State of Danger. Thus, even though Government Decree 36/2022. (II. 11.) is longer in force, the restrictions emptying out the right to strike with respect to educational institutions remain.

The respective provisions of Act V of 2022 were **challenged before the Constitutional Court** in July 2022 by opposition Members of Parliament, who argued in their posterior norm control request that the provisions in question violated, among others, the right to strike, freedom of expression and the right to a fair administrative procedure, and were in contradiction with international treaties. However, as another example of the packed Constitutional Court ruling in favour of the incumbent parties in politically sensitive cases,²⁰ **the petition was rejected** by the Constitutional Court. The justices concluded that the restrictions pursued a constitutionally legitimate aim by protecting the interest of children, but they did not engage in any meaningful proportionality analysis.²¹

4. Changing the rules of dismissal to exert pressure on teachers

¹⁶ Cf.: “it would not be consistent with the rule of law in a democratic society or with the basic principle underlying Article 6 para. 1 (art. 6-1) – namely that civil claims must be capable of being submitted to a judge for adjudication – if, for example, a State could, without restraint or control by the Convention enforcement bodies, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities from civil liability on large groups or categories of persons” (*Fayed v. the United Kingdom*, Application no. 17101/90, Judgment of 21 September 1990, § 65).

¹⁷ Basic Principles on the Independence of the Judiciary, 6 September 1985, Section 4, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>.

¹⁸ Resolution 3282/2022. (VI. 10.) AB of the Constitutional Court

¹⁹ Government Decree 181/2022. (V. 24.) on Declaring a State of Danger and Terminating the State of Danger Declared by Government Decree 27/2021. (I. 29.) on Declaring a State of Danger and the Entry into Force of State of Danger Measures

²⁰ For further examples, see e.g.: *Contributions of Hungarian NGOs to the European Commission’s Rule of Law Report*, January 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/01/HUN_NGO_contribution_EC_RoL_Report_2022.pdf, pp. 51-52; *Contributions of Hungarian CSOs to the European Commission’s Rule of Law Report*, January 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/01/HUN_CS0_contribution_EC_RoL_Report_2023.pdf, pp. 58-59.

²¹ Decision 1/2023. (I. 4.) AB of the Constitutional Court. The official English summary of the decision is available [here](https://www.alkotbirosekt.hu/en/1-2023-01-04).

4.1. Civil disobedience and dismissals

After the national elections in April 2022, which resulted in yet another two-thirds victory for the governing parties, public education became the purview of the Ministry of Internal Affairs. It became evident very soon that the Government has still no intention to enter into meaningful discussion with teachers and students about their requests: at one of his parliamentary committee hearings, the prospective Minister of Internal Affairs, Sándor Pintér (who held the position also in the previous Government) set the tone by stating for example that “one can educate only in a class where there is order” and that he does not recognize civil disobedience and regards it “a disciplinary matter”.²²

The Minister mentioned civil disobedience because having their right to strike curtailed prompted teachers throughout Hungary to voice their concerns via other means. In addition to demonstrations organised by students, parents and teachers, **several teachers have been practicing civil disobedience in the form of not taking up work for limited periods of time**, i.e. they have chosen not to carry out all their duties as teachers without being on strike legally speaking. Many teachers who participated in the civil disobedience received warning letters from the state school districts. The warnings reminded the teachers of their duties and stated that their employer regards their actions in breach of those. The warnings also stated that the repeated refusal to work will be regarded as a legal basis to terminate their employment.

These events culminated in September-October 2022 into five **teachers** of the Kölcsey Ferenc Secondary School being **dismissed** by the school district for taking part in the civil disobedience.²³ This measure’s potential for having a chilling effect on protesting teachers was exacerbated by the fact that one of the teachers dismissed is a widely known representative of the teachers’ movement *Tanítanék Mozgalom*, which has been advocating for changes in the public education system for years. These dismissals were, among others, in breach of the requirement of non-discrimination/equal treatment and freedom of expression. Dismissals also failed to meet the test of reasonability, e.g. because teachers were fired for not teaching a few classes, but their dismissal resulted in many of their classes not being taught afterwards by qualified teachers or at all, thereby violating the rights of students. The dismissal of the five teachers from the Kölcsey Ferenc Secondary School was followed by further dismissals from other schools,²⁴ but civil disobedience and protests continued.²⁵

4.2. The Government uses its emergency powers abusively

In addition to the dismissals, the Government reacted to the civil disobedience by adopting **Government Decree 4/2023. (I. 12.)** on Certain State of Danger Rules Affecting Public Education Institutions as an emergency decree on 12 January 2023, which entered into force the next day, and **changed the rules of how employers can dismiss employees of public education institutions for violating labour obligations**. The decree extended the deadline of extraordinary dismissal from 15 days (to be counted from the alleged violation of the labour obligations) to long months: it set out that in the case of public service employees and non-teaching staff working in public education institutions, employers can exercise extraordinary dismissal / immediate termination of employment until 1 August

²² Minutes of the hearing by the Parliament’s Committee of Cultural Affairs on 18 May 2022, <https://www.parlament.hu/documents/static/biz42/bizjvk42/KOB/2205181.pdf>

²³ See e.g.: <https://444.hu/2022/09/30/tobb-tanart-kirugtak-a-budapesti-kolcsey-ferenc-gimnaziumbol>.

²⁴ See e.g.: <https://telex.hu/english/2022/11/30/8-more-hungarian-high-school-teachers-fired-for-civil-disobedience>, <https://444.hu/2022/12/12/a-kirugott-tanarok-tabloja>.

²⁵ See e.g.: <https://hu.euronews.com/2022/10/23/a-tanarokert-tuntetnek-oktober-23-an-budapesten>, <https://telex.hu/english/2022/12/01/almost-five-hundred-teachers-start-indefinite-civil-disobedience-students-in-several-high-schools-hold-sit-ins>, <https://444.hu/2023/01/03/nincsen-okunk-abbahagyani-mondjak-az-oktatas-helyzete-miatt-menetelve-tiltakozok>.

of the academic year in question, or, in case the employer learns about the violation of the labour obligation between 1 August and the end of the academic year, until 1 August of the following academic year. (“Extraordinary dismissal” in the law on the status of civil service employees and “immediate termination of employment” in the Labour Code are measures the employer can take in reaction to very severe violations of labour obligations, where the employee is dismissed with immediate effect, without a period of notice or severance payment. These are to be distinguished from “ordinary” dismissal, where a period of notice applies and the employee is entitled to severance payment.)

The decree could also be applied retroactively: it could be applied if the employer was informed of a violation of a labour obligation before the decree entered into force, provided that at the time of the decree’s entering into force less than 15 days have passed since the employer was informed about the violation of the obligation.

As pointed out by the Democratic Union of Educators,²⁶ the result of the legal amendment is that employers can allow teachers participating in civil disobedience to work until the end of the academic year and can dismiss them afterwards, even for something that happened months before. Since it is left to the employer’s discretion whether to resort to extraordinary dismissal or immediate termination of employment, and if yes, at which point in time, **the possibility of the dismissal hangs like the sword of Damocles over teachers participating in civil disobedience, leaving them in a state of uncertainty**, and in this way the decree exacerbates their vulnerability that is inherent in the asymmetrical nature of the relationship between employer and employee.

This considerably **increases pressure on teachers who participate in civil disobedience**. It is telling in this regard that the Government’s reasoning attached to the decree explicitly says that “in some public education institutions, politically motivated and unlawfully organised cessations of work have become a phenomenon that violates children’s right to education”, and that the decree “gives employers more leeway to ensure the smooth operation of public education institutions and the education of children”²⁷ – clearly showing that the decree targets teachers who participate in civil disobedience.

Even though the reasoning heavily refers to the rights of children and the state’s obligation to protect them, the fact that the decree actually allows employers to keep not only teachers who are protesting through civil disobedience but also those who commit serious misconducts on staff for months shows that **the real aim is not the protection of children but to undermine the effectiveness of teachers’ protests**. At the same time, as pointed out by the Union of Educators, the decree is an implicit admittance by the Government that there is a huge shortage of teachers in the country.²⁸

The decree violates the rights of teachers and constitutional principles as follows:

- Once again, the content of this emergency decree has no connection whatsoever to the war in Ukraine (which serves as the ground for the state of danger under which the decree has been issued), and so the decree constitutes **an abuse of the Government’s emergency powers**.

²⁶ <http://www.pdsz.hu/cikk/38056>

²⁷ The reasoning is available here: <https://njt.hu/jogszabaly/2023-4-K3-22>.

²⁸ See e.g.: <https://444.hu/2023/01/13/psz-a-kormany-rendelete-elismeri-oriasi-a-pedagogushiany>.

- Furthermore, the decree **violates the freedom of expression**²⁹ of those who participate in civil disobedience, with the restrictions above being neither necessary nor proportionate, and also **violates the prohibition of discrimination**³⁰ in their regard.
- It can be argued as well that it amounts to the **violation of human dignity** that the legislator sees teachers as a means of filling gaps in the education system and keeping the system functioning, while it places them in a state of uncertainty they cannot influence.
- In addition, the decree **violates the principles of legal certainty and non-retroactivity**.³¹

4.3. Cementing the violation on a statutory level

On 2 March 2023, the Ministry of Internal Affairs published a draft law on the legal status of those employed in public education and the amendment of certain related laws (hereinafter: Draft Status Law), with a 10 March 2023 deadline to submit opinions in the framework of public consultation.³² The Draft Status Law foresees complex and profound changes in the status of public education staff and the functioning of educational institutions (see in more detail below). In particular, Article 53 of the Draft Status Law **would cement on a statutory level the new concept of Government Decree 4/2023. (I. 12.) concerning the rules for the extraordinary dismissal of employees of public education institutions** as detailed above. Thus, once again, rights violations created by an emergency decree would become permanent and would be elevated to a statutory level.³³

5. Transforming the status and working conditions of teachers

Contrary to its title, the Draft Status Law would do far more than just transform the legal categorization of the employment status of teachers. According to the general explanatory memorandum attached to it, the envisaged law's primary objective is to make the career path of teachers more attractive. However, in the light of this objective, it is difficult to understand why, as several professional and interest groups have pointed out,³⁴ **the new law would introduce several changes that would clearly make the employment situation of teachers more difficult and reduce their professional autonomy.**

Moreover, an accompanying draft law confirms that **the pay rise promised to teachers in the autumn of 2022³⁵ is undertaken by the Government only on the condition that the country is granted access to EU funds.**³⁶ At the same time, the legislator **has failed to take into account the demands expressed by teachers, students and parents** with regard to the public education system in the last several months.

In addition to resulting in a **general deterioration of the labour rights** of those working in public education, it is also evident that the Draft Status Law intends to **reduce teachers' opportunities to**

²⁹ Fundamental Law, Article IX(1)

³⁰ Fundamental Law, Article XV(1)-(2)

³¹ Derived from Article B(1) of the Fundamental Law.

³² <https://kormany.hu/dokumentumtar/koznev-fogl-jogall-es-egy-es-egy-kapcs-tvk-mod-mo-2023-evi-kozp-ktgv-et-sz-tv-modos>

³³ For more on that, see the Hungarian Helsinki Committee's opinion about the Draft Status Law: https://helsinki.hu/wp-content/uploads/2023/03/Helsinki_Bizottsag_velemeney_pedagogus_statusz_tv_2023_03_10.pdf.

³⁴ See e.g.: <https://telex.hu/belfold/2023/03/09/belugyminiszterium-pedagogus-statusztorveny-jogviszony-pdsz-szakszervezet>, <https://szuloihang.hu/2023/03/06/torvenymodositas-a-fejunk-felett-onalotlan-pedagogusok-neveljek-onallosagra-a-gyerekeket/>, <https://ckpinfo.hu/2023/03/08/a-civil-kozoktatasi-platform-velemenye-az-egyveztetesre-bocsatott-jogszabalyokrol/>.

³⁵ See e.g.: <https://telex.hu/english/2022/10/13/gulyas-promises-unprecedented-increase-in-teachers-pay-at-government-press-briefing>.

³⁶ See: the draft law on amending Act XXV of 2022 on the Central Budget of Hungary for 2023, Article 2(1).

assert their interests, severely restrict their professional autonomy and increase their vulnerability vis-à-vis school districts.

As an element of these efforts, the draft law **would further amend the rules of strike** by inserting a new provision³⁷ into Act CXC of 2011 on National Public Education. This would provide that if the operation of a state-maintained public education institution cannot be temporarily ensured due to the unlawful cessation of work or the combined effect of lawful and unlawful cessations of work, the maintainer of the public education institution may designate a different place of activity for the institution concerned, and may even abolish or reorganise not only school classes but entire educational institutions.³⁸ This would be a further curtailment of the right to strike, since it would allow, on the one hand, the removal of teaching from the institution where the strike is taking place (and even the closing of that institution), i.e. it would create the conditions for hollowing the strike out. On the other hand, the new rules would be capable of turning teachers in the designated school (whose workload would significantly increase as a result of the designation) against their colleagues participating in the strike/civil disobedience.

In addition, the Draft Status Law **curtails to an extreme extent teachers' say regarding substantive educational content**. It can be reasonably assumed that it is more attractive to work in a legislative environment that gives teachers a greater degree of autonomy and responsibility, so a change that curtails professional autonomy and takes important decisions about educational activities out of the hands of teachers will reduce the attractiveness of the teaching profession.

Finally, the process of the public consultation regarding the Draft Status Law can be criticised as well. The six working days provided for reviewing and commenting on a draft law that is almost a hundred pages long and would bring along complex changes cannot be deemed sufficient. In addition, accompanying documents published by the Ministry of Internal Affairs that are supposed to present the effects of the law do not cover all of the changes envisaged, and the addendum outlining the objectives of the proposed legislation is altogether one page long, which is obviously insufficient to justify a proposal of such volume.

6. Violating international and EU commitments

Legislative steps taken and envisaged with the aim of silencing teachers do not only **violate the Fundamental Law of Hungary**, but go against international standards as well. For example, as detailed above, curtailing the right to strike and the amended rules of dismissal **violate various rights protected by the European Convention on Human Rights**.

It has to be recalled as well that the **European Commission's Rule of Law Report** criticised the Government for the extensive use of its emergency powers and for going beyond the Parliament's authorisation when it issued emergency measures to regulate matters unrelated to the ground of the state of danger.³⁹ This continuing practice **violates the respective standards established by the Venice Commission** as well, which set out that "only [emergency] measures which are necessary to help the

³⁷ Article 84/A

³⁸ See the envisaged Article 84/B of Act CXC of 2011 on National Public Education.

³⁹ European Commission, *2022 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2022-07/40_1_193993_coun_chap_hungary_en.pdf, p. 25.

State overcome the exceptional situation may be justified”.⁴⁰ The emergency decrees presented above clearly fail to comply with this requirement.

The concerns raised above are also connected to the conditions of accessing EU funds.

- (i) First, as already mentioned above, the pay rise promised to teachers would be undertaken by the Government on the condition that the country is granted access to EU funds.⁴¹ The reason for this is that in a rather unusual manner, **the Government intends to finance the pay rise from the European Social Fund Plus (ESF+)**, through the Human Resources Development Operational Programme Plus (*Emberi Erőforrás Fejlesztési Operatív Program Plusz*, EFOP Plusz). (It is worth pointing out that an earlier draft version of the EFOP Plusz from September 2021 did not yet contain the pay rise of educators.⁴²) In EFOP Plusz, Hungary has made a general commitment that “the Government and the Parliament will not unilaterally introduce measures that increase teachers’ workload, restrict existing professional autonomy or undermine the attractiveness of the profession. Such measures can only be taken on the basis of a meaningful social dialogue with the largest teachers’ unions, in particular with regard to acquired rights.”⁴³

Since many provisions of the Draft Status Law would restrict existing professional autonomy or undermine the attractiveness of the profession, if the Government submits the Draft Status Law in its current format, without duly considering the concerns raised by teachers’ unions, it will violate its commitment made to the EU.

- (ii) Second, **the legislative steps taken and envisaged violate various fundamental rights of the teachers in the context of exercising their profession that are protected also by the Charter of Fundamental Rights of the European Union.** The amended rules of strike applicable in the case of teachers (both the restrictions already undertaken and those planned in the Draft Status Law) violate the right of collective bargaining and action (Article 28 of the Charter). Furthermore, the amended rules of dismissal, which would be elevated to a statutory level by the Draft Status Law, violate the freedom of expression (Article 11 of the Charter), the principle of non-discrimination (Article 21 of the Charter), and human dignity, in particular workers’ right to working conditions which respect their dignity as an element of the requirement of fair and just working conditions (Articles 1 and Article 31 of the Charter).

Since through the EFOP Plusz the EU would be financing part of the salaries of Hungarian teachers whose rights are violated by these legislative steps in the context of exercising their profession, **the European Commission should consider whether these violations amount to the non-compliance with the horizontal enabling condition “Effective application and implementation of the Charter of Fundamental Rights”.**

- (iii) Third, it should be recalled that the respective Commission implementing decision already concludes that **Hungary does not fulfil the horizontal enabling conditions with respect to the European Social Fund Plus and EFOP Plusz, due to non-compliance with the Charter of Fundamental Rights.** Non-compliance flows from (i) the deficiencies regarding judicial

⁴⁰ European Commission for Democracy Through Law (Venice Commission), *Respect for Democracy, Human Rights and the Rule of Law During States of Emergency – Reflections*, CDL-PI(2020)005rev-e, 26 May 2020, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)005rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)005rev-e), § 10

⁴¹ Cf.: the draft law on amending Act XXV of 2022 on the Central Budget of Hungary for 2023, Article 2(1)

⁴² As pointed out also by the Hungarian fact-checking site Lakmusz (<https://www.lakmusz.hu/tenyleg-brusszelen-mulik-a-tanarok-beremelese/>).

⁴³ *Emberi Erőforrás Fejlesztési Operatív Program Plusz – EFOP Plusz 2021-2027*,

https://www.palyazat.gov.hu/emberi_eroforas_fejlesztési_operatív_program_plusz, Priority 2, p. 44. The cited text is a translation by the Hungarian Helsinki Committee from Hungarian.

independence that Hungary will have to address in line with the respective “super milestones” as undertaken in the country’s Recovery and Resilience Plan; and (ii) the Russian-style anti-LGBTQI “propaganda law”,⁴⁴ because of which the European Commission already referred Hungary to the Court of Justice of the European Union.⁴⁵ However, the draft law on the judiciary published by the Government in January 2023 does not fulfil the milestones in its current form and will need to be amended to meet all the requirements;⁴⁶ while the Government took no steps at all to repeal the anti-LGBTQI law referred to above. Moreover, according to the European Commission, Hungary **does not fulfil five thematic enabling conditions** either with respect to the EFOP Plusz, including the thematic enabling condition “4.3. Strategic policy framework for the education and training system at all levels”.

Fulfilling these horizontal and thematic enabling conditions to the fullest extent should be the Government’s priority instead of pushing through the Parliament the amendments envisaged in the Draft Status Law.

7. Recommendations

- The **right to strike should be fully ensured** also for teachers. Provisions of Act V of 2022 on the Regulatory Issues related to the Termination of the State of Danger that restrict the right to strike should be repealed.
- **Provisions** of Government Decree 4/2023. (I. 12.) on Certain State of Danger Rules Affecting Public Education Institutions **that changed the rules of how employers can exercise extraordinary dismissal or immediate termination of employment** with respect to (public) employees working in public education institutions **should be repealed**.
- It should be ensured that the **state and public administration agencies refrain from actions that curtail the freedom of expression of teachers**, and from any action that might exert a chilling effect on their freedom of expression.
- The **Government should show self-restraint in the use of the extremely wide-ranging authorization it received during the state of danger**, and it should avoid issuing emergency decrees that are not closely related to the war in Ukraine.
- The **consultation** period for the **Draft Status Law** and any accompanying draft law should be extended, accompanying documents should be revised, and affected professional, interest and civil society groups should be consulted further in substance. Concerns raised by professional, interest and civil society groups in the framework of the public consultation should be duly taken into account, and the problematic provisions should not be made into law.
- The Government should enter into meaningful consultation with the representatives of teachers, students and parents, i.e. affected professional, interest and civil society groups in order to **devise legislative and practical steps that are aimed at fulfilling the demands** expressed in the last

⁴⁴ Act LXXIX of 2021 on Stricter Action against Paedophile Offenders and Other Amending Acts for the Protection of Children, that prohibits or limits access to content that propagates or portrays the so-called “divergence from self-identity corresponding to sex at birth, sex change or homosexuality” for individuals under the age of 18.

⁴⁵ COMMISSION IMPLEMENTING DECISION approving the programme “Human Resources Development Operational Programme Plus” for support from the European Regional Development Fund and the European Social Fund Plus under the Investment for jobs and growth goal in Hungary, CCI 2021HU05FFPR001, [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10010&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10010&lang=en)

⁴⁶ See in more detail: <https://helsinki.hu/en/joint-assessment-of-the-governments-judicial-package-aimed-at-unblocking-eu-funds/>.

several months by these groups, **aimed of the betterment of the Hungarian public education system.**

- **Horizontal and thematic enabling conditions** with respect to the Human Resources Development Operational Programme Plus **should be fulfilled.**